



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2005-NM-0006; FRL-9756-3]

Approval and Promulgation of Implementation Plans;

New Mexico; New Source Review (NSR) Preconstruction Permitting Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the applicable New Source Review (NSR) State Implementation Plan (SIP) for New Mexico. Among the changes, EPA is proposing to approve are the following: the establishment of a new minor NSR (MNSR) general construction permitting program; changes to the MNSR Public Participation requirements; the establishment of three different types of MNSR Permit Revisions; and the addition of exemptions for *de minimis* emission sources and activities from obtaining a MNSR permit. EPA proposes to find that these revisions to the New Mexico SIP comply with the Federal Clean Air Act (the Act or CAA) and EPA regulations and are consistent with EPA policies. EPA is proposing this action under section 110 of the Act.

DATES: Comments must be received on or before **[insert the date 30 days after date of publication in FEDERAL REGISTER]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R06-OAR-2005-NM-0006, by one of the following methods:

- (1) www.regulations.gov : Follow the on-line instructions for submitting comments.

- (2) E-mail: Ms. Ashley Mohr at mohr.ashley@epa.gov.
 - (3) Fax: Ms. Ashley Mohr, Air Permits Section (6PD-R), at fax number 214-665-6762.
 - (4) Mail: Ms. Ashley Mohr, Air Permits Section (6PD-R), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733.
 - (5) Hand or Courier Delivery: Ms. Ashley Mohr, Air Permits Section (6PD-R), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733.
- Such deliveries are accepted only between the hours of 8:30 AM and 4:30 PM weekdays except for legal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-R06-OAR-2005-NM-0006. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Do not submit information through <http://www.regulations.gov> or e-mail, if you believe that it is CBI or otherwise protected from disclosure. The <http://www.regulations.gov> website is an "anonymous access" system, which means that EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment along with any disk or CD-ROM submitted. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

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Docket: All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Air Permits Section (6PD-R), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 AM and 4:30 PM weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. A 15 cent per page fee will be charged for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area on the seventh floor at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The State submittal related to this SIP revision, and which is part of the EPA docket, is also available for public inspection at the State Air Agency listed below during official business hours by appointment:

New Mexico Environment Department, Air Quality Bureau, 1301 Siler Road, Building B, Santa Fe, New Mexico.

FOR FURTHER INFORMATION CONTACT: If you have questions concerning today's direct final action, please contact Ms. Ashley Mohr (6PD-R), Air Permits Section,

Environmental Protection Agency, Region 6, 1445 Ross Avenue (6PD-R), Suite 1200, Dallas, Texas 75202-2733, telephone (214) 665-7289; fax number (214) 665-6762; email address mohr.ashley@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document the following terms have the meanings described below:

- “we”, “us” and “our” refer to EPA.
- “Act” and “CAA” mean the Clean Air Act.
- “40 CFR” means Title 40 of the Code of Federal Regulations – Protection of the Environment.
- “SIP” means the State Implementation Plan established under section 110 of the Act.
- “NSR” means new source review.
- “TSD” means the Technical Support Document for this action.
- “NAAQS” means any national ambient air quality standard established under 40 CFR part 50.

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I. What Action is EPA Proposing?

The Act at section 110(a)(2) requires states to develop and submit to EPA for approval into the SIP preconstruction review and permitting programs applicable to certain new and modified stationary sources of air pollutants for attainment and nonattainment areas that cover both major and minor sources and modifications, collectively referred to as the NSR SIP. The CAA NSR SIP program is composed of three separate programs: Prevention of Significant Deterioration (PSD), Nonattainment New Source Review (NNSR), and MNSR. PSD is established in part C of title I of the CAA and applies in areas that meet the NAAQS – “attainment areas” – as well as areas where there is insufficient information to determine if the

area meets the NAAQS – “unclassifiable areas.” The NNSR SIP program is established in part D of title I of the CAA and applies in areas that are not in attainment of the NAAQS – “nonattainment areas.” The Minor NSR SIP program addresses construction or modification activities that do not emit, or have the potential to emit, beyond certain thresholds and thus do not qualify as “major” and applies regardless of the NAAQS designation of the area in which a source is located. Together, these programs are referred to as the NSR program. EPA regulations governing the criteria that states must satisfy for EPA approval of the NSR programs as part of the SIP are contained in 40 CFR sections 51.160 - 51.166; and part 51, Appendix S.

EPA is proposing to approve revisions to the NSR SIP for New Mexico submitted on May 29, 1998, November 6, 1998, April 11, 2002, April 25, 2005, and November 2, 2006, which incorporate changes to the Construction Permits regulation contained in 20.2.72 of the New Mexico Administrative Code (NMAC), also known as Part 72. Part 72 contains the provisions that establish New Mexico’s Minor NSR permitting program as well as preconstruction permitting requirements potentially applicable to other programs under the NMAC. EPA also is proposing to approve as part of the New Mexico NSR SIP, the letter dated November 7, 2012, from the Secretary committing the NMED Air Quality Bureau to providing notification on the NMED’s website of all second 30-day public comment periods provided for under Paragraph B of Section 206 of Part 72.

The five SIP revisions submittals under review in this action contain proposed changes to each of the current SIP-approved Sections of Part 72 and include the proposed addition of two new Sections within the Part. All changes are identified in Table 1 of this rulemaking. These proposed changes include non-substantive changes to Part 72, such as corrections of typographical errors and additions of clarifying language to the existing SIP. These proposed

changes also include revisions that result in a more stringent SIP than currently approved, such as incorporation of additional recordkeeping and notification requirements for portable sources to relocate without a permit; these changes resulting in a more stringent SIP are discussed in more detail in this rulemaking and TSD. Furthermore, some of the revisions include changes that alter current SIP-approved permitting programs but still meet applicable federal requirements, such as a change from case-by-case permitting to general permitting for certain Minor NSR sources. Finally, proposed changes also include revisions that are less stringent than the current SIP and those revisions must be evaluated under section 110(l) of the CAA to determine they will not interfere with attainment or reasonable further progress or any other applicable requirement of the Act. These revisions include the addition of exemptions for *de minimis* sources and activities from MNSR permitting requirements, tiered permit revisions, and changes to MNSR public notice and participation requirements. The November 7, 2012 letter from the Secretary provides clarifying information for the changes to MNSR public notice and participation requirements. Our technical analysis of all these proposed changes contained in the May 29, 1998, November 6, 1998, April 11, 2002, April 25, 2005, and November 2, 2006 SIP revision submittals, the Secretary's November 7, 2012 letter, and additional supplemental information provided by NMED, has found that they meet the CAA and 40 CFR Part 51 and are consistent with EPA policies.^{1,2,3,4} Therefore, EPA proposes action to approve the revisions to Part 72 and the Secretary's November 7, 2012 letter into the New Mexico NSR SIP. EPA is

¹ Clarification of Exemptions in Section 202 of 20.2.72 NMAC – Construction Permits letter dated September 19, 2012 from Richard L. Goodyear, PE, Bureau Chief, NMED to Mr. Thomas Diggs, Associate Director for Air Programs, EPA, Region 6.

² Clarification of Intent for Section 220 of 20.2.72 NMAC – Construction Permits letter dated September 19, 2012 from Richard L. Goodyear, PE, Bureau Chief, NMED to Mr. Thomas Diggs, Associate Director for Air Programs, EPA, Region 6.

³ Permit Exemptions data provided via electronic mail dated September 18, 2012, from Kerwin Singleton, NMED, to Ashley Mohr, EPA, Region 6.

⁴ Historical Technical permit revisions data was provided via electronic mail dated November 2, 2012, from Kerwin Singleton, NMED, to Ashley Mohr, EPA, Region 6.

proposing this action under section 110 of the Clean Air Act (the Act). We provide a summary of the reasoning comprising our evaluation in this rulemaking, as well as a more detailed evaluation and analysis in the Technical Support Document (TSD) for this rulemaking.

II. What did New Mexico Submit?

EPA's proposed approval action today addresses portions of five revisions to the New Mexico SIP submitted on May 29, 1998, November 6, 1998, April 11, 2002, April 25, 2005, and November 2, 2006. EPA also is proposing to approve as part of the New Mexico NSR SIP, the letter dated November 7, 2012, from the Secretary.

A. May 29, 1998 SIP Revision Submittal

The State of New Mexico submitted a revision on May 29, 1998 to 20.2.72 NMAC – Construction Permits for incorporation into the New Mexico SIP. This submittal includes the following changes:

- *Revisions to the following sections:* 20.2.72.104 NMAC, Effective Date; 20.2.72.202 NMAC, Permit Revisions; 20.2.72.203 NMAC, Contents of Applications; and 20.2.72.207 NMAC, Permit Decisions and Appeals.
- *Addition of the following new sections:* 20.2.72.219 NMAC, Permit Revisions and 20.2.72.220 NMAC, General Permits.

B. November 6, 1998 SIP Revision Submittal

The State of New Mexico submitted a revision on November 6, 1998 to 20.2.72 NMAC – Construction Permits for incorporation into the New Mexico SIP. This submittal includes the following changes:

- *Revisions to the following sections:* 20.2.72.210 NMAC, Permit Conditions and 20.2.72.300 NMAC, Definitions.

C. April 11, 2002 SIP Revision Submittal

The State of New Mexico submitted a revision on April 11, 2002 to 20.2.72 NMAC – Construction Permits for incorporation into the New Mexico SIP. This submittal includes the following changes:

- *Revisions to the following sections:* 20.2.72.107 NMAC, Definitions; 20.2.72.201 NMAC, New Source Review Coordination; 20.2.72.203 NMAC, Contents of Applications; 20.2.72.206 NMAC, Public Notice and Participation; 20.2.72.207 NMAC, Permit Decisions and Appeals; 20.2.72.208 NMAC, Basis for Denial of Permit; 20.2.72.215 NMAC, Emergency Permit Process; 20.2.72.219 NMAC, Permit Revisions; 20.2.72.220 NMAC, General Permits; 20.2.72.301 NMAC, Applicability; 20.2.72.302 NMAC, Contents of Applications; and 20.2.72.304 NMAC, Permit Decisions.
- In addition to the revisions of the previously listed sections, the April 11, 2002 submittal also included the renumbering of several existing sections and formatting changes that were made throughout the entire Part. These formatting changes were necessary for the provisions contained in Part 72 to match the formatting style of other Parts contained in the NMAC.

D. April 25, 2005 SIP Revision Submittal

The State of New Mexico submitted a revision on April 25, 2005 to 20.2.72 NMAC – Construction Permits for incorporation into the New Mexico SIP. This submittal includes the following changes:

- *Revisions to the following section:* 20.2.72.219 NMAC, Permit Revisions.

E. November 2, 2006 SIP Revision Submittal

The State of New Mexico submitted a revision on November 2, 2006 to 20.2.72 NMAC – Construction Permits for incorporation into the New Mexico SIP. This submittal includes the following changes:

- *Revisions to the following section: 20.2.72.216 NMAC, Nonattainment Area Requirements.*

Table 1 summarizes the changes that are in the SIP revisions submitted on May 29, 1998, November 6, 1998, April 11, 2002, April 25, 2005, and November 2, 2006. A summary of EPA's evaluation of each section and the basis for this action is discussed in Section III of this preamble. The TSD includes a detailed evaluation of the referenced SIP submittals.

Table 1. Summary of each SIP submittal that is affected by this action.

Section	Title	Submittal Dates	Description of Change	Proposed Action
20.2.72 NMAC – Construction Permits				
Issuing Agency				
20.2.72.100 NMAC	Issuing Agency	4/11/2002	Section 100 renumbered to Section 1 and revised to update the section title formatting.	Approval
Scope				
20.2.72.101 NMAC	Scope	4/11/2002	Section 101 renumbered to Section 2 and revised to update the section title formatting.	Approval
Statutory Authority				
20.2.72.102 NMAC	Statutory Authority	4/11/2002	Section 102 renumbered to Section 3 and revised to update the section title formatting.	Approval
Duration				
20.2.72.103 NMAC	Duration	4/11/2002	Section 103 renumbered to Section 4 and revised to update the section title and section references formatting.	Approval
Effective Date				
20.2.72.104 NMAC	Effective Date	5/29/1998	Section revised to account for different effective dates for the different sections contained in this Part.	Approval

		4/11/2002	Section 104 renumbered to Section 5 and revised to update the section title and date formatting.	Approval
Objective				
20.2.72.105 NMAC	Objective	4/11/2002	Section 105 renumbered to Section 6 and revised to update the section title formatting.	Approval
Amendment and Supersession of Prior Regulations				
20.2.72.106 NMAC	Amendment and Supersession of Prior Regulations	4/11/2002	Section 106 renumbered to Section 8 and revised to update the section title formatting.	Approval
Definitions				
20.2.72.107 NMAC	Definitions	4/11/2002	Section 107 renumbered to Section 7 and revised to update the section title, section references, and list numbering formatting; Section revised to update the definition of “Potential Emission Rate”.	Approval
Documents				
20.2.72.108 NMAC	Documents	4/11/2002	Section 108 renumbered to Section 9 and revised to update the section title formatting.	Approval
Application for Construction, Modification, NSPS, and NESHAP – Permits and Revisions				
20.2.72.200 NMAC	Application for Construction, Modification, NSPS, and NESHAP – Permits and Revisions	4/11/2002	Section revised to update the section title, section references, and list numbering formatting.	Approval
New Source Review Coordination				
20.2.72.201 NMAC	New Source Review Coordination	4/11/2002	Section revised to include clarification regarding the number of applications required if source is subject to NSR under multiple parts; Section revised to update the section title and section references formatting.	Approval
Permit Revisions				

20.2.72.202 NMAC	Permit Revisions	5/29/1998	Section revised to add a list of emission sources and activities that may be exempt from certain preconstruction permitting requirements; Section revised to include an exemption from preconstruction permitting applicability for a specific group of sources that trigger permitting only as a result of NSPS and NESHAP requirements.	Approval
		4/11/2002	Section revised to update the section title, section references, and list numbering formatting.	Approval
Contents of Applications				
20.2.72.203 NMAC	Contents of Applications	5/29/1998	Section revised to update provisions to reflect the tiered permit revisions approach and to add clarifying language regarding public notice requirements, including requirements for public service announcements.	Approval
		4/11/2002	Section revised to update the section title, section references, and list numbering formatting.	Approval
Confidential Information Protection				
20.2.72.204 NMAC	Confidential Information Protection	4/11/2002	Section revised to update the section title and section references formatting.	Approval
Construction, Modification and Permit Revision in Bernalillo County				
20.2.72.205 NMAC	Construction, Modification and Permit Revision in Bernalillo County	4/11/2002	Section revised to update the section title formatting.	Approval
Public Notice and Participation				
20.2.72.206 NMAC	Public Notice and Participation	5/29/1998	Section was revised to remove a descriptive term from the provisions that the Department felt was unnecessary and caused confusion in the current provisions.	Approval

		4/11/2002	Section revised to update the section title, section references, and list numbering formatting; Section revised to change the public notice process to a two-step notice with the public comment period reduced from 45 days to 30 days.	Approval
Permit Decisions and Appeals				
20.2.72.207 NMAC	Permit Decisions and Appeals	5/29/1998	Section revised to include clarifying language and to specify what requirements in the section apply only to Significant permit revisions.	Approval
		4/11/2002	Section revised to update the section title, section references, and list numbering formatting.	Approval
Basis for Denial of Permit				
20.2.72.208 NMAC	Basis for Denial of Permit	4/11/2002	Section revised to include clarifying language and to delete references to provisions that have been previously removed from the NMAC.	Approval
Additional Legal Responsibilities on Applicants				
20.2.72.209 NMAC	Additional Legal Responsibilities on Applicants	4/11/2002	Section revised to update the section title formatting.	Approval
Permit Conditions				
20.2.72.210 NMAC	Permit Conditions	11/6/1998	Section was revised to correct a typographical error that was adopted by the state in a previous revision of the Section.	Approval
		4/11/2002	Section revised to update the section title, section references, and list numbering formatting.	Approval
Permit Cancellations				
20.2.72.211 NMAC	Permit Cancellations	4/11/2002	Section revised to update the section title and list numbering formatting.	Approval
Permittee's Notification Requirements to Department				
20.2.72.212 NMAC	Permittee's Notification Requirements to Department	4/11/2002	Section revised to update the section title.	Approval
Startup and Followup Testing				
20.2.72.213 NMAC	Startup and Followup Testing	4/11/2002	Section revised to update the section title and section references formatting.	Approval
Source Class Exemption Process (Permit Streamlining)				

20.2.72.214 NMAC	Source Class Exemption Process (Permit Streamlining)	4/11/2002	Section revised to update the section title, section references, and list numbering formatting.	Approval
Emergency Permit Process				
20.2.72.215 NMAC	Emergency Permit Process	4/11/2002	Section revised to update the section title and section references formatting.	Approval
Nonattainment Area Requirements				
20.2.72.216 NMAC	Nonattainment Area Requirements	4/11/2002	Section revised to update the section title, section references, and list numbering formatting.	Approval
		11/2/2006	Section revised to include clarifying language and to specify permitting applicability tests for permit actions in nonattainment areas.	Approval
Compliance Certifications				
20.2.72.217 NMAC	Compliance Certifications	4/11/2002	Section revised to update the section title and section references formatting.	Approval
Enforcement				
20.2.72.218 NMAC	Enforcement	4/11/2002	Section revised to update the section title, section references, and list numbering formatting.	Approval
Permit Revisions				
20.2.72.219 NMAC	Permit Revisions	5/29/1998	Section added to the Part and permit revisions previously contained in Section 202 were moved to this Section and revised to include three separate tiers of permit revisions.	Approval
		4/11/2002	Section updated to revise references to other provisions in the Part that were changes as a result of simultaneous updates; Section revised to update the section title, section references, and list numbering formatting.	Approval
		4/25/2005	Section updated to include two additional permit actions that would qualify as Technical permit revisions instead of Significant revisions.	Approval
General Permits				

20.2.72.220 NMAC	General Permits	5/29/1998	Section added to the Part to include provisions related to the state adopted General Permits preconstruction program. ^a	Approval
		4/11/2002	Section revised to update the section title, section references, and list numbering formatting.	Approval
Definitions				
20.2.72.300 NMAC	Definitions	11/6/1998	Section was revised to correct a typographical error that was adopted by the state in a previous revision of the Section.	Approval
		4/11/2002	Section revised to update the section title and section references formatting.	Approval
Applicability				
20.2.72.301 NMAC	Applicability	4/11/2002	Section updated to revise references to other provisions in the Part that were changes as a result of simultaneous updates; Section revised to update the section title, section references, and list numbering formatting.	Approval
Contents of Applications				
20.2.72.302 NMAC	Contents of Applications	4/11/2002	Section revised to include clarifying language regarding the permit application requirements for applicant's seeking a streamlined construction permit; Section revised to update the section title, section references, and list numbering formatting.	Approval
Public Notice and Participation				
20.2.72.303 NMAC	Public Notice and Participation	4/11/2002	Section revised to update the section title, section references, and list numbering formatting.	Approval
Permit Decisions				
20.2.72.304 NMAC	Permit Decisions	4/11/2002	Section revised to include clarifying language regarding the review of a permit application for "administrative completeness"; Section revised to update the section title, section references, and list numbering formatting.	Approval
General Requirements				

20.2.72.305 NMAC	General Requirements	4/11/2002	Section revised to update the section title, section references, and list numbering formatting.	Approval
Source Class Requirements				
20.2.72.306 NMAC	Source Class Requirements	4/11/2002	Section revised to update the section title, section references, and list numbering formatting.	Approval
Table 1 – Significant Ambient Concentrations				
20.2.72.500 NMAC	Table 1 – Significant Ambient Concentrations	4/11/2002	Section revised to update the section title formatting.	Approval
Table 2 – Permit Streamlining Source Class Categories				
20.2.72.501 NMAC	Table 2 – Permit Streamlining Source Class Categories	4/11/2002	Section revised to update the section title formatting.	Approval

^a 20.2.72.220(A)(2)(c)(i) NMAC references the requirements found in 20.2.77 NMAC, 20.2.78 NMAC, and 20.2.82 NMAC (hereafter collectively referred to as Parts 77, 78, and 82), which are regulations separate from the preconstruction permitting rules governed by 20.2.72 NMAC. The regulations included in Parts 77, 78, and 82 are subject to statutory and regulatory evaluation beyond the statutory scope of this rulemaking. This action is limited to determining whether the revisions to the Part 72 – Construction Permit provisions contained in the New Mexico SIP comply with the Federal Clean Air Act and EPA regulations and are consistent with EPA policies. Therefore, we are approving the reference to these regulations as part of the General Permits provisions being approved into Part 72 of the New Mexico SIP so as to include the requirement that general construction permits contain adequate permit conditions to ensure compliance with the requirements contained in Parts 77, 78, and 82, but we are not evaluating or approving into the SIP the underlying and related regulations for these Parts through this rulemaking.

III. EPA’s Evaluation

The current New Mexico SIP includes EPA-approved Part 72 provisions (*see* 62 FR 50514, September 26, 1997), which are related to New Mexico’s MNSR construction permit program and preconstruction permitting requirements potentially applicable to other programs under the New Mexico Administrative Code. Since the September 26, 1997 EPA approval, New Mexico has submitted revisions to Part 72 provisions to EPA for review and action on the following dates: May 29, 1998, November 6, 1998, April 11, 2002, April 25, 2005, and November 2, 2006. The following sections of this proposed action and the accompanying TSD analyze the proposed revisions to the Construction Permits regulation found in Part 72 to preliminarily determine whether the submitted revisions and the Secretary’s Letter dated November 7, 2012 as a whole support the CAA, EPA policy, and guidance for NSR permitting.

A. What are the Requirements for EPA's Evaluation of a Preconstruction Permitting Program SIP Submittal?

The State of New Mexico submitted revisions to its NSR SIP on May 29, 1998, November 6, 1998, April 11, 2002, April 25, 2005, and November 2, 2006, incorporating changes to the Construction Permits regulation contained in 20.2.72 NMAC for approval by EPA as revisions to the New Mexico NSR SIP. These SIP revisions were submitted pursuant to the applicable requirements of section 110(a)(2) of the CAA. For example, the federal requirements at Section 110(a)(2)(A) direct each SIP to include enforceable emission limitations necessary or appropriate to meet the CAA's applicable requirements. Section 110(a)(2)(C) requires each SIP to include a program to provide for the enforcement of the measures described in 110(a)(2)(A), and regulation of the modification and construction of any stationary source within attainment/unclassifiable areas and nonattainment areas. EPA regulations further governing the criteria that states must satisfy for EPA approval of the NSR programs as part of the SIP are contained in 40 CFR sections 51.160 - 51.166; and part 51, Appendix S.

In addition to the applicable preconstruction permitting program related requirements of section 110(a)(2), EPA's evaluation must consider section 110(l) of the CAA. Section 110(l) of the CAA states that EPA shall not approve a revision of the SIP if it would interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement of the Act. Thus, under CAA section 110(l), the proposed NSR SIP revision submittals must not interfere with attainment, reasonable further progress, or any other applicable requirement of the Act. The provisions contained in Part 72 are applicable to all "regulated air pollutants," which includes all pollutants for which there are NAAQS. Therefore, as part of the 110(l) analysis, we have evaluated the proposed NSR SIP revision submittals for

their impacts on attainment and reasonable further progress for all NAAQS pollutants. The entire state of New Mexico is designated attainment for all pollutants, with the exception of PM₁₀ and 1-hour ozone. The only area designated nonattainment for PM₁₀ in New Mexico is Anthony, which is located in Dona Ana County, and the only area designated nonattainment for the 1-hour ozone NAAQS is Sunland Park, which is also located in Dona Ana County.⁵

In EPA's technical review of New Mexico's submitted SIP revisions, as further discussed in Section III.B of this preamble, and the TSD, we evaluate each revision against the applicable federal requirements and regulations.

B. Technical Review of New Mexico's SIP Revision Submittals

The provisions found in Part 72 are divided into five subparts. Four of the five subparts contain provisions that are currently approved into the New Mexico SIP, with Subpart IV (20.2.72.400 NMAC – 20.2.72.499 NMAC), which relates to Permits for Toxic Air Pollutant Emission, being outside of the scope of the New Mexico SIP.⁶ The remaining four SIP-approved subparts are as follows: Subpart I (20.2.72.100 NMAC – 20.2.72.199 NMAC) – General Provisions, Subpart II (20.2.72.200 NMAC – 20.2.72.299 NMAC) – Permit Processing and Requirements, Subpart III (20.2.72.300 NMAC – 20.2.72.399 NMAC) – Source Class Permit Streamlining, and Subpart V – Appendix. As part of the five SIP revision submittals under review in the action, changes were made to the provisions contained in each of the four

⁵ The Sunland Park area has unique considerations for ozone planning due to airshed contributions from Mexico and Texas. Air quality within the Paso del Norte Airshed has improved over the last 10 years due to cooperative efforts between the State of Texas, the State of New Mexico, and Mexico through organizations such as the Paso Del Norte Joint Advisory Committee (JAC). Although the area has continued to monitor attainment of the 1-hour ozone standard the State chose not to submit a request for redesignation before EPA revoked the 1-hour ozone NAAQS. Monitors in Sunland Park continue to reflect attainment of the 1-hour ozone NAAQS. The State, however, did not submit a request for redesignation of the area to attainment for the 1-hour ozone standard and a section 175A maintenance plan. Because the area was never redesignated to attainment, the area must continue to meet the 1-hour ozone marginal area applicable requirements (see 40 CFR 51.905(a)(3)). Sunland Park has met the revoked 1-hour ozone standard since 1998. (See 76 FR 28181).

⁶ Subparts I, II, III, and V were approved by EPA on September 26, 1997 (62 FR 50518), effective November 25, 1997.

SIP-approved subparts. As detailed in the TSD, the May 29, 1998, November 6, 1998, April 11, 2002, April 25, 2005, and November 2, 2006 SIP submittals meet the completeness criteria established in 40 CFR 51, Appendix V. In addition to the completeness review, the revisions contained in the five SIP submittals were evaluated against the applicable requirements contained in the Act and 40 CFR 51. A Section-by-Section review showing each proposed change made to Part 72 is included in the TSD for this proposed action, which also includes a summary of the revisions made to each specific section of Part 72. The following sections of this preamble provide a summary of the reasoning comprising our evaluation used in this rulemaking, specifically for those proposed revisions that include substantive changes to Part 72.

1. Submitted Revisions to Section 203 – Contents of Permit Applications

40 CFR 51.160 contains federal requirements regarding information an owner or operator of a new or modified source must submit to the State or local agency. The current SIP-approved Part 72 contains requirements regarding contents of a permit application that any person seeking a permit under 20.2.72.200(A) NMAC must file with the Department. New Mexico has proposed several revisions to the required contents of permit applications as specified in Section 203 in the May 29, 1998 and April 11, 2002 SIP revision submittals. In addition to formatting, clarification, and other non-substantive changes detailed in the TSD, these revisions include substantive changes that add to existing SIP-approved requirements. These changes include the addition of provisions related to the changing, supplementing, or correcting a previously submitted permit application. The revisions also include the provision of additional requirements tied to the existing Public Service Announcement requirements for permit applicants. Because the revisions to the current SIP-approved Section 203 include additional requirements for permit applicants with respect to the contents of permit applications that were not present in the current SIP, we

propose to approve these revisions into the New Mexico SIP as meeting applicable federal requirements, including 40 CFR 51.160.

2. Submitted Revisions to Section 207 – Permit Decisions and Appeals

Section 207 of the currently approved SIP includes procedural requirements regarding permit and permit revision issuance by the Department, and petition for hearing and appeal procedural requirements for applicants adversely affected by a permit decision by the Department. The May 29, 1998 and April 11, 2002 SIP revisions include clarifying language, formatting changes, and other non-substantive changes to Section 207, which are further detailed in the TSD. The May 29, 1998 SIP revision also added language to change the applicability of Section 207's requirements regarding the Department's completeness determination and time frame within which the Department must take action on a permit application to Significant permit revisions, rather than all permit revisions. This change reflects the tiered permit revision approach adopted by New Mexico under the newly added Section 219, and that approach is further discussed in Subsection III.B.6 of this preamble.

The submitted Section 207 requirements, in part, specify numbers of days within which the Department shall either grant, grant subject to conditions, or deny a permit or permit revision after the Department deems a permit application administratively complete. For permit applications that are subject to the PSD requirements of Part 74, the April 11, 2002 SIP revision reduced the time for the Department's action from 240 days to 180 days.⁷ Section 165(c) of the CAA requires that any completed PSD permit application shall be granted or denied no later than one year after the date of filing of such completed application. The reduction of time for the Department's action on a PSD permit application from 240 days to 180 days thus still complies

⁷ We are only reviewing and proposing action on the revisions to Part 72 in this action. The underlying regulations and program in Part 74 were not included, and are substantively not required to be evaluated, in the SIP revisions EPA is evaluating in this rulemaking.

with federal requirements to act on such a permit within one year after the date of filing of a completed application.

The April 11, 2002 SIP revision reduced the number of days within which the Department must take action upon a preconstruction permit application that is not subject to the PSD requirements of Part 74 from 180 days to 90 days. This reduction applies to both Part 79 NNSR and Part 72 MNSR permits. NMED has been implementing this reduction in time for review of NNSR permit applications for over 10 years. NMED has issued zero (0) new NNSR permits between 1995 and 2012.⁸ Similarly, NMED has been implementing this reduction in time for the Department's review of Minor NSR permits for over 10 years. NMED has issued approximately 673 new MNSR permits between 1995 and 2012.⁹ As previously discussed, the entire state of New Mexico is designated attainment for all pollutants, with the exception of PM₁₀ and 1-hour ozone. The only area designated nonattainment for PM₁₀ in New Mexico is Anthony, which is located in Dona Ana County, and the only area designated nonattainment for the 1-hour ozone NAAQS is Sunland Park, which is also located in Dona Ana County. We propose to find the reduction of time for the Department's review of NNSR and Minor NSR permit applications has therefore not interfered with attainment, reasonable further progress, or any other applicable requirement of the Act.

Section 207 of the current SIP also specifies the Department shall hold a hearing within 90 days upon receipt of a timely petition for hearing by a person who participated in a permitting action before the Department and is adversely affected by such permitting action. The April 11, 2002 SIP revision changed the number of days by which the Department must hold a hearing

⁸ Historical NNSR permit issuance data was provided via electronic email dated November 7, 2012, from Ted Schooley, NMED, to Ashley Mohr, EPA, Region 6.

⁹ Historical new MNSR permit issuance data was provided via electronic mail dated November 2, 2012, from Kerwin Singleton, NMED, to Ashley Mohr, EPA, Region 6.

from 90 days to 60 days. Because this change expedites the time frame within which the Department must hold a hearing upon receipt of a petition by a person adversely impacted by a permitting action, this change is one that makes the current SIP more stringent. We propose to find the revisions to Section 207 comply with applicable federal requirements, including section 110(l) of the Act.

3. Submitted Revisions to Section 216 – New Applicability Conditions and Requirements for Sources Located in Nonattainment Areas

The current SIP-approved Part 72 contains potentially applicable requirements for sources located in Nonattainment areas within the Section 216 provisions. New Mexico proposed non-substantive changes to Section 216 in the April 11, 2002 SIP revision submittal that include updates to formatting within the rule provisions to be consistent with formatting updates that were made throughout Part 72 and the NMAC. New Mexico also proposed changes to this section of Part 72 as part of the November 2, 2006 SIP revision submittal. These changes to Section 216 include the non-substantive changes to the rule language in Paragraphs (A)(1), (A)(2), and (B) to clarify that the requirements of this section are potentially applicable to both new sources and modifications of an existing source. This change does not change the applicability test or requirements of Section 216. The April 11, 2002 SIP revision also contained proposed changes to add Paragraphs (A)(3) and (C) to Section 216. The addition of these two sections add a requirement for specific stationary sources (i.e., landfills and grandfathered sources) that were not previously required to obtain a preconstruction NSR permit to submit an application for a permit under Part 72, including submittal of a modeling analysis to demonstrate compliance with the NAAQS. The April 11, 2002 revisions also incorporate a requirement that if those newly permitted sources could not show compliance with the NAAQS, the source would

be required to make changes to the facility that would result in a overall net air quality benefit. These proposed revisions to Section 216 result in a more stringent SIP than currently approved. Therefore, we propose to approve these revisions to Section 216 into the SIP by the determination that they will not affect the ability of the Section, or Part 72 overall, to meet the federal requirements for SIP-approved permitting plans.

4. Submittal of New Section 220 – Minor NSR General Permits

The current SIP-approved provisions of Part 72 contain provisions for a Source Class Permit Streamlining program but issuance of such a permit required prior EPA approval. New Mexico adopted the new Section 220, which contains the general preconstruction permitting program, and submitted this addition in the May 29, 1998 SIP submittal.¹⁰ In New Mexico's proposed general permitting program, the underlying provisions related to the general permitting program are adopted into the state's regulations and are submitted for approval into the New Mexico SIP by EPA. As a result, if Section 220 is approved by EPA into the SIP, the general permits that are developed and issued by the NMED in accordance with the procedures and requirements of Section 220 automatically become part of the SIP, and therefore, are federally enforceable on the basis that they meet the SIP-approved requirements of the general construction permits program in Section 220.

Paragraph A of Section 220 includes the requirements related to the procedures to develop and issue a general permit. As required in 20.2.72.220(A)(1) NMAC, a general construction permit developed by NMED must cover numerous similar sources. Sources

¹⁰ The proposed general construction permitting program is similar to the Source Class Permit Streamlining program contained in 20.2.72.300 – 20.2.72.399 NMAC of the current New Mexico SIP. The key difference is that under the current SIP-approved Source Class Permit Streamlining program, each source class permit must be approved by EPA into the SIP; whereas, under the proposed Section 220 general construction permitting program, the underlying provisions for the permitting program are SIP approved and the individual general permits undergo public participation process similar to that required for a case-by-case NSR permit.

allowed to register for coverage under a general permit must be homogenous in terms of operations, processes and emissions, subject to the same or substantially similar requirements, and not subject to case-by-case standards or requirements. These requirements satisfy the federal requirement 40 CFR 51.160(a) that the SIP has legally enforceable procedures that enable the NMED to determine whether construction or modification will result in a violation of a control strategy or interfere with attainment or maintenance of a national standard in New Mexico or a surrounding state. Section 20.2.72.220(A)(2) NMAC requires each general permit to describe which sources may qualify to register under the general permit, which satisfies the requirement of 40 CFR 160(e) which provides that the SIP must identify the types and sizes of facilities that will be subject to review. NMED has indicated in the SIP submittal that the permits developed and issued under the general construction permitting program are for Minor NSR sources.¹¹

40 CFR 51.160 requires that the Minor NSR SIP revision submittal be enforceable. In particular, 40 CFR 51.160(a) requires that the SIP revision be enforceable in order to ensure that the issuance of the Minor NSR permit will not cause or contribute to a violation of any SIP control strategy and will not interfere with attainment and maintenance of the NAAQS. The September 23, 1987, Memorandum from J. Craig Potter, Assistant Administrator for Air and Radiation, and Thomas L. Adams Jr., Assistant Administrator for Enforcement and Compliance Monitoring, entitled “Review of State Implementation Plans and Revisions for Enforceability and Legal Sufficiency” provides EPA’s guidance for assessing whether a SIP revision submittal is sufficiently enforceable. We find that the new general construction permitting program meets the requirements of section 40 CFR 51.160(a), which requires that SIP revision submittals be enforceable. The submitted regulation specifically requires that a general permit include monitoring, record keeping and reporting (MRR) requirements appropriate to the source and

¹¹ Pages 77 and 78 of hearing transcripts for October 17, 1997 Environmental Improvement Board Public Hearing.

sufficient to ensure compliance with the general construction permit. At a minimum, the general permit shall specify where the records shall be maintained, how long the records shall be retained and that all records or reports shall be made available upon request by the Department. The general permit also must contain sufficient terms and conditions to ensure that all sources operating under a general permit will meet all applicable requirements under the Federal Clean Air Act, e.g., NSPS, NESHAPS, and MACT, and all requirements of the SIP. Such a general permit is not allowed to cause or contribute to air contaminant levels in excess of any National or New Mexico Ambient Air Quality Standard. For these reasons, EPA finds that the submitted general construction permitting program will ensure attainment and maintenance of the NAAQS and will prevent violations of any of the New Mexico SIP's control strategies. Under this submitted new permitting program, the State is able to determine if there will be an adverse impact on air quality.

EPA has recognized, for certain classes of sources, that it is appropriate for states to establish enforceable emission limits that serve to limit potential to emit through exclusionary rules that apply to certain source categories. *See*, Memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, Office of Air Quality Planning and Standards (OAQPS) entitled “Guidance for State Rules for Optional Federally-Enforceable Emissions Limits Based on Volatile Organic Compound Use,” dated October 15, 1993; *See also*, Memorandum from John Seitz, Director, OAQPS entitled “Approaches to Creating Federally-Enforceable Emission Limits,” dated November 3, 1993. EPA also issued a guidance memorandum that provides guidance for addressing the minor source status under the Act for lower-emitting sources in eight source categories. *See*, April 14, 1998, Memorandum entitled, “Potential to Emit (PTE) Guidance for Specific Source Categories” (hereinafter the 1998

memoranda). It provides technical information useful in devising practicable enforceable potential to emit for small sources and identifies sources that are “true minors.” Although not an exclusionary rule, the practicable enforceability criteria in the guidance memoranda serve as a way to measure whether the submitted general construction permitting program is practicably enforceable and therefore can ensure that issuance of the Minor general NSR permit will not cause or contribute to a violation of any SIP control strategy and will not interfere with attainment and maintenance of the NAAQS. The submitted program clearly identifies the category of sources that qualify for coverage. The submitted program provides that a source notify the State of its coverage under the program by submitting a complete application to register. The NMED shall grant registration to a source only if it submits a complete application and meets the terms and conditions of the general permit. The NMED may grant or deny an application.

Based on the requirements contained in Section 220 and further clarification provided by NMED, a general permit could not be developed for use by a Major NSR source.¹² The state’s implementation of the general permitting program since the state adopted the Section 220 provisions is consistent with the fact that the general permitting program is for Minor NSR sources only. Each of the general construction permits that New Mexico has issued in accordance with Section 220 includes facility-wide annual emission limits that are less than PSD permitting thresholds. In addition, Paragraph A of Section 220 includes provisions that specify what requirements must be met for a general permit to be issued under Section 220, including requirements that the permit contain sufficient terms and conditions, along with sufficient monitoring, record keeping, and reporting requirements, to assure that sources authorized via the

¹² Clarification of Intent for Section 220 of 20.2.72 NMAC – Construction Permits letter dated September 19, 2012 from Richard L. Goodyear, PE, Bureau Chief, NMED to Mr. Thomas Diggs, Associate Director for Air Programs, EPA, Region 6.

general construction permit will meet all applicable requirements under the Act, including PSD and NNSR. Since these major NSR permitting programs require source-specific evaluations as part of the permitting process, a general permit could not be developed to authorize a major NSR source. The general permitting program was adopted as a Minor NSR preconstruction permitting program, and NMED's historical implementation since adoption of Section 220 is consistent with its intended applicability to Minor NSR sources only.

The provisions contained in Paragraph A of Section 220 also address public notice requirements for issued general permits. 20.2.72.220(A)(1) NMAC requires that prior to issuance, each general construction permit must undergo the same public notice as that required for case-by-case permits in Section 206. Section 206 public notice requirements are discussed in more detail in Section III.B.5 of this preamble. Paragraph B of Section 220 contains procedural requirements that must be met if NMED wishes to modify an existing general construction permit. These modifications are required to undergo an additional public notice and must include a transition schedule that addresses how and when sources that are registered under the existing general construction permit will be transitioned to the requirements contained in the modified general construction permit.

Together with Paragraph A, we propose to find the provisions of Paragraph B contain requirements that satisfy the requirements contained in 40 CFR 51.160, 51.161, 51.163 related to a permitting program having legally enforceable procedures, making information publicly available, and having administrative procedures in place to operate the program consistent with the previous requirements. The addition of Section 220 also does not interfere with the Part 72 construction permits program ability to meet requirements in 40 CFR 51.162 and 51.164 that are

applicable to Minor NSR programs, since the addition does not impact the identification of the responsible agency or the stack height procedures.

Because the revisions to incorporate the general permitting program under Section 220 would add an alternative Minor NSR permitting approach to the preconstruction permitting program, these proposed revisions must also be evaluated to determine if they will interfere with attainment or reasonable further progress or any other applicable requirement of the Act. This evaluation is included in the following section of this preamble.

a. 110(l) Analysis for Section 220

The provisions in Section 220 establish a general preconstruction permitting program that allows NMED to develop and issue general permits. Minor NSR sources may seek authorization under these general permits in lieu of case-by-case preconstruction permits if they meet the requirements of the general permitting program and the specific requirements of the general construction permit, itself. As required by the provisions of Section 220, a general construction permit issued under Section 220 must contain terms and conditions that assure that sources authorized via the general construction permit will meet all applicable requirements under the federal act (e.g., PSD, NSPS, NESHAP) and will not cause or contribute to an exceedance of the NAAQS.¹³ As stated in the May 29, 1998 SIP submittal supporting documentation, a general construction permit will contain more conservative permit conditions and more stringent requirements since the general permit has to be protective of all applicable state and federal requirements for each source that may seek authorization via the general construction permit. Therefore, the general construction permits developed and issued by NMED are likely to contain more stringent permit conditions for a given source than would be included in a case-by-case permit issued for that same source.

¹³ 20.2.72.220(A)(2)(c)(1) NMAC

Section 220 also identifies procedures for existing general construction permits to be modified by NMED. This modification procedure allows NMED to update the general permit conditions if they determine that more stringent conditions are necessary or to account for new state or federal requirements. Under the general preconstruction permitting program established in Section 220, each source registration under a general permit requires review and approval by NMED prior to construction, as well as, a separate public notice of each source registration. The public notice provisions require the source to notify the public that the source is seeking authorization under a general construction permit. NMED has been utilizing the general preconstruction permitting program based on the provisions in Section 220 since the state adoption of those provisions in 1998 without any indication that the implementation of this Minor NSR program has interfered with attainment or reasonable further progress.

Based on the reasons discussed above, we do not believe that the addition of the general preconstruction permitting provisions contained in Section 220 will interfere with attainment or reasonable further progress or any other applicable requirement of the Act. Our evaluation of the SIP revision submittals related to Section 220, which are under review in this action, demonstrates compliance with section 110(l) of the CAA and provides further basis for proposed approval of this SIP revision.

5. Submitted Revisions to Section 206 – Public Notice and Participation for Minor NSR

Prior to the revisions contained in the April 11, 2002 SIP submittal, NMED under existing SIP-approved Section 206 was required to publish in a newspaper of general circulation in the area closest to the location of the source public notice of the permit application submitted under Part 72 and the Department's preliminary determination for a single 45-day comment period. The proposed revisions to Section 206 revise the public notice procedures so that it

becomes a two-step process, whereas the current SIP public notice procedure is a one-step process. Under the submitted Section 206 revised provisions, NMED publishes in a newspaper of general circulation in the area closest to the location of the source public notice of the permit application. The public would then have 30 days to express written interest in the permit application, whereas under the current SIP-approved provisions the public has 45 days to comment on the permit application and the Department's preliminary determination.

If NMED does not receive any written expressions of interest from the public on the permit application during the 30-day public notice of the permit application, the Department will take action to issue or deny the permit. However, if any person expresses interest in writing in the permit application during the 30-day public notice period, NMED shall notify these interested persons of the date and location that the Department's Analysis was or will be available. These interested people and any other member of the public then have 30 days to submit written comments on the Department's Analysis. The NMED cannot issue the permit until at least 30 days after the Department's Analysis is available for review. As clarified in the Secretary's November 7, 2012 letter, the second 30-day period is triggered for members of the public to submit written comments on the Department's Analysis, when the State posts notice of the availability of the Analysis onto its website.¹⁴

Additionally, New Mexico has submitted a SIP revision to the language within 20.2.72.206(A)(7) NMAC requiring public notices to be sent to the Region 6 EPA office, adding language directing public notices be sent if requested by EPA. 40 CFR 51.161(d) requires that a state send a copy of all public notices to EPA via the Regional Office, without qualifying whether a request by EPA is necessary. To ensure that all public notices are received by EPA

¹⁴ Public Notice for Minor Source New Source Review letter dated November 7, 2012, from Dave Martin, Cabinet Secretary, NMED, to Mr. Ron Curry, Regional Administrator, EPA, Region 6.

pursuant to 40 CFR 51.161(d), Region 6 has formally requested copies of each public notice be provided to EPA.¹⁵ Therefore, NMED will provide a copy of all public notices for construction permits to EPA, and we propose to approve 20.2.72.206(A)(7) NMAC as consistent with the federal requirement in 40.CFR 51.161(d).

a. 110(l) Analysis for Section 206

As noted, the proposed revisions to Section 206 do result in a reduction in the length of the public notice period from 45 days to 30 days. This public notice period, while reduced from the current SIP-approved requirements, is equivalent to the federal public participation minimum public comment period requirements, which requires a 30-day period for submittal of public comment. The proposed revisions also require a person to comment in writing on the permit application before any member of the public can comment on the Department's Analysis. We believe that this is a minimal burden placed on the public to express written interest on the permit application in order to have the opportunity to comment on the Department's Analysis. This additional requirement does not undermine federal public participation requirements. Also, the change from 45 days to 30 days for public review and comment, while a reduction, also meets federal public participation minimum public comment period requirements. Therefore, we propose to approve these revisions into the SIP by determining that they will not interfere with the ability of the New Mexico SIP to meet the applicable federal public participation requirements, nor will they violate the requirements of CAA section 110(l).

6. Submittal of New Section 219 – Permit Revisions for Minor NSR

¹⁵ Copies of public notices were requested via letter from Mr. Thomas Diggs, Associate Director for Air Programs, EPA, Region 6 to Mr. Richard Goodyear, PE, Bureau Chief, NMED on September 7, 2012. NMED responded to EPA's request via letter dated September 13, 2012 from Mr. Goodyear, NMED, to Mr. Diggs, EPA, and agreed to provide copies of the notices to EPA. Copies of these letters and all others referenced in this proposal are in the docket for this rulemaking.

The current SIP-approved Permit Revisions provisions under Section 202 include general requirements for sources seeking permit revisions to submit a revision request to NMED, which was to include a description of the proposed changes and the reasons for those changes. The current SIP requires that permit revisions with associated increases in permitted emission limits are processed in accordance with public notice, review, and hearing procedures contained in Sections 206 and 207 of Part 72. As part of the submitted May 29, 1998 SIP revisions, the Permit Revisions provisions were moved to Section 219 and were revised to include three different tiers of revisions: Administrative, Technical, and Significant. These Permit Revisions provisions were subsequently revised and submitted in the April 11, 2002 and April 25, 2005 SIP submittals. The tiered permit revision process established in the May 29, 1998 SIP revision submittal was developed by New Mexico through a permitting Task Force that consisted of NMED staff and members of the public, including representatives from industry and environmental groups. The Task Force identified types of Minor NSR permit revisions that should qualify for streamlined permitting based on their anticipated negligible or insignificant environmental impacts and established the proposed tiered permit revisions process for Minor NSR permit revisions.

The public participation requirements for each of the three new types of permit revisions were also changed in the May 29, 1998 SIP revision submittal. The associated public notice requirements are one of the main differences between the separate tiers of permit revisions included in Section 219. The Federal requirements for Minor NSR permit applications and public notice requirements are at 40 CFR 51.160 and 161. These requirements establish the minimum requirements for approvability of a state's Minor NSR SIP, which a state develops to prevent construction and modification of stationary sources from interfering with an area's ability to achieve compliance with a NAAQS.

These requirements generally require 30-day public review for all sources subject to the Minor NSR; however, these requirements also allow a State to identify the types and sizes of facilities, buildings, structures, or installations, which will require full preconstruction review by justifying the basis for the State's determination of the proper scope of its program.¹⁶ Importantly, our decision to approve a State's scope of its Minor NSR program must consider the individual air quality concerns of each jurisdiction, and therefore will vary from state to state.

New Mexico's submitted rules create tiered, public notice requirements for the three types of permit revisions. New Mexico justified its approach for permit revision applications using *de minimis* principles like those established in *Alabama Power*.¹⁷ A Significant permit revision will have the same public notice requirements as an application for a new minor source. The submitted New Mexico rules generally provide that all new Minor NSR permit applications and all Minor NSR Significant permit revision applications will go through public notice consistent with federal requirements at 40 CFR 51.160 and 51.161. Under the submitted rules, Administrative permit revisions do not have any associated public notice requirements. Meanwhile, the submitted Technical permit revisions require that the applicant conduct a reduced public notice, as compared with the full notice required for new Minor NSR permits and Significant permit revisions. EPA recognizes a State's ability to tailor the scope of its Minor NSR program as necessary to achieve and maintain the NAAQS. As documented in the State's SIP revision submittal and subsequent submission of supporting information, New Mexico justified the scope of its regulatory program, and thus the permit applications for which full

¹⁶ For example, under the federal Tribal NSR regulations, EPA did not require permits for sources with emissions below "*de minimis*" levels, and for sources in "insignificant source categories". 76 FR at 38755. In sum, under these Tribal NSR regulations, some sources are not required to obtain permits, and have no public notice requirements.

¹⁷ See *Ala. Power Co. v. Costle*, 636 F.2d 323 (D.C.Cir. 1979).

public review is necessary, using *de minimis* principles like those established in *Alabama Power* to identify permit revisions that are not environmentally significant.

EPA's evaluation of the environmental significance of each permit revision tier and its associated public participation requirements are discussed in the following subsections and the TSD. The following subsections and TSD also discuss the State's analysis and supporting documentation regarding how the permitting actions qualifying as Administrative and Technical permit revisions were chosen and why the Department finds that these permit actions qualify for a more streamlined permitting process because of their environmental insignificance.

a. Administrative Permit Revisions

NMED established Administrative permit revisions that are limited to those actions that are listed below that do not have any associated increases in permitted emissions, and a permittee may obtain such a revision for an existing source without undergoing preconstruction permitting requirements under Part 72. Administrative permit revisions do not have applicable filing or permit fees under Part 75 and are also not subject to the public notice requirements contained in either Section 203 or Section 206. Administrative permit revisions are limited to the following permit actions that are considered to be administrative changes:

- Correction of typographical errors,
- Change in administrative information (e.g., change in owner, facility address, or contact phone number),
- Incorporation of the retirement of permitted source or the closing of a facility,
- Incorporation of the deletion of a proposed source(s) that was not constructed or will not be built, or

- Incorporation of Section 202 Paragraph B exempted sources.¹⁸

Because these permit revisions do not have any associated increases in permitted emissions, they would not be required to undergo the preconstruction permitting requirements under Part 72 to receive a permit revision. Under the new submitted SIP rule, Administrative permit revisions now require a certified written notification of the revision be submitted by the applicant to NMED. Administrative revisions become effective upon receipt of the notification by NMED. NMED is not required to reissue the permit to incorporate an Administrative permit revision. The revised SIP rule is more stringent than the current SIP with respect to requiring certified written notification of the Administrative revision to be submitted by the applicant to NMED.

Under the proposed SIP revisions, Administrative permit revisions are exempt from all Minor NSR public participation requirements under Part 72. As documented in the SIP revision submittals, the permit revisions allowed under the Administrative revision provisions are limited to those permit changes that are administrative in nature and do not result in a change to any permit term or condition and do not have any associated increases in permitted emission rates. Therefore, the Administrative permit revisions are truly *de minimis* in nature, and we propose to find that New Mexico provided an adequate demonstration and justification to show that their proposed Administrative permit revisions provisions meet 40 CFR 51.160(e) and 161.

b. Technical Permit Revisions

NMED also established Technical permit revisions in the proposed SIP revisions that include the following changes to a permit:

¹⁸ The incorporation of the Paragraph B exempted sources into an existing permit is an administrative action and does not change the exempt status of these sources. These Section 202 Paragraph B exempt sources remain exempt from Minor NSR permitting requirements and their incorporation into an existing permit does not result in an increase in permitted emission rates or change a term or condition of the existing permit.

- Incorporate changes to monitoring, recordkeeping, or reporting requirements that do not reduce the enforceability of the permit,
- Incorporate the addition of permit conditions on sources that existed on August 31, 1972, and have been operated regularly since,
- Like kind replacement of permitted equipment that meets the specific requirements listed in 20.2.72.219(B)(1)(d) NMAC,
- Incorporate terms and conditions in the permit for the purpose of reducing the potential emission rate of a unit or source (e.g., cap on hours or throughputs),
- Incorporate addition of new equipment with potential emission rate no more than 1 pound per hour (4.38 tons per year, assuming continuous operation for 8,760 hours per year) for any NAAQS pollutant or any VOC,
- Revision of permitted emission limit based on initial compliance testing results that meets the specific requirements listed in 20.2.72.219(B)(1)(e) NMAC, and
- Incorporate the addition of, or substitution of, a different type of air pollution control equipment with an increase in potential emission rate no more than 1 pound per hour (4.38 tons per year, assuming continuous operation for 8,760 hours per year) for any NAAQS pollutant or total VOCs.

The Technical permit revisions established under the proposed New Mexico SIP revisions are not required to meet the full public participation requirements under Part 72.¹⁹ Under the new submitted Section 219, Technical permit revisions, like new permit applications and Significant permit revision applications, the applicant still is required to publish a newspaper

¹⁹ Technical permit revisions are not subject to public notification requirements under Paragraphs 1, 4 and 5 of Subsection B of 20.2.72.203 NMAC, and 20.2.72.206 NMAC. However, applicant's requesting a Technical permit revision must still meet the public notice requirements contained in Paragraphs 2 and 3 of 20.2.203 NMAC.

notice of general circulation in each county in which the source is proposing to construct or modify. This newspaper notice shall contain the following:

1. The applicant's name and address, together with the names and addresses of all owners or operators of the facility or proposed facility;
2. The actual or estimated date that the application was or will be submitted to the Department;
3. The exact location of the facility or proposed facility;
4. A description of the process or change for which a permit is sought, including an estimate of the maximum quantities of any regulated air contaminant the source will emit after proposed construction is complete or permit is issued;
5. The maximum and standard operating schedules of the facility after completion of proposed construction or permit issuance; and
6. The current address of the Department to which comments and inquiries may be directed.

The applicant also is still required to provide certified mail notices of the proposed Technical permit revision to nearby municipalities, Indian tribes, and counties.²⁰ Public participation requirements for Technical permit revisions also allow for NMED to hold a public meeting in response to significant public interest in the proposed permit revision. What is no longer required is that the applicant (1) provides certified mail notices to owners of all properties

²⁰ 20.2.72,203(B)(1) and (2) NMAC require that the applicant's public notice be: (1) provided by certified mail, to the owners of record, as shown in the most recent property tax schedule, of all properties: (a) within one hundred (100) feet of the property on which the facility is located or proposed to be located, if the facility is or is proposed to be located in a Class A or Class H county or a municipality with a population of more than two thousand five hundred (2500) persons; or (b) within one-half (1/2) mile of the property on which the facility is located or is proposed to be located if the facility is or will be in a county or municipality other than those specified in Subparagraph (a) of Paragraph 1 of Subsection B of 20.2.72.203 NMAC; and (2) provided by certified mail to all municipalities and counties in which the facility is or will be located and to all municipalities, Indian tribes, and counties within a ten (10) mile radius of the property on which the facility is proposed to be constructed or operated.

within specified distances; (2) post signs of the notice in four publicly accessible places; or (3) submit a public service announcement to at least one radio or TV station that serves the area where the source is located. NMED is not required to publish a newspaper notice that includes its preliminary intent to issue the permit if the construction or modification requested in the application will comply with air quality requirements, including ambient standards.

The applicant is required to file a certified written notification of the proposed Technical revision to NMED. NMED has 30 days after the receipt of a complete application to approve or deny the Technical permit revision or inform the applicant that the Technical permit revision request must be “bumped up” and resubmitted as a Significant permit revision requiring the revision to undergo full public participation. The Technical permit revision becomes effective upon written approval from NMED, and NMED is required to attach the Technical permit revision to the existing permit.

While the Technical permit revisions are exempt from a portion of the public participation requirements, within the scope of New Mexico’s revised rules, the thresholds do not affect any part of the technical review of these permit revision applications, including a requirement that the applicant demonstrate that the proposed modification will not result in allowable emissions that could contribute to an exceedance of the NAAQS.

New Mexico determined that revisions allowed under the Technical permit revisions provisions were limited to permit revisions that either have no associated increases in emissions or associated emissions increases that are insignificant. The first four permit actions listed previously that qualify as Technical permit revisions do not have any associated increases in permitted emission rates. Therefore, similar to the Administrative permit revisions, these four types of Technical permit revisions are truly *de minimis* in nature. Therefore, similar to our

determination for Administrative permit revisions, we propose to find that New Mexico provided an adequate demonstration and justification to show that these four types of Technical permit revisions provisions that are excluded from the full public participation requirements are environmentally insignificant and therefore satisfy the provisions of 40 CFR 51.160(e) and 161. The three remaining types of Technical permit revisions are limited to permit revisions that are expected to be environmentally insignificant, either because of the limits placed on the associated emissions increases or because the limited subcategory of permit revisions, which represent a small subset of the permitting universe that are allowed by the Technical revisions. Two of the remaining Technical revisions are limited to permit actions that have associated increases in permitted emission rates less than 1 pound per hour, which equates to 4.38 tons per year assuming continuous operation. As documented in the SIP revision submittal, an emissions increase of this small magnitude is not expected to result in a significant environmental impact. The last Technical permit revision with associated increases in permitted emissions allows an applicant to request up to a 10 percent increase in permitted emission rates as a result of initial compliance testing. Such adjustments in permitted emission rates are limited to very specific permit actions, and the applicant is required to, as part of the Technical permit revision request, supply a demonstration that the requested increase will not trigger additional requirements under any Part of the NMAC, including Part 74 – PSD, and will not result in allowable emissions that could contribute to the violation of any NAAQS. The provisions in Section 219 result in the scope of permit revisions that would qualify for the 10 percent increase allowance to be limited to a small portion of permitting actions. New Mexico has reviewed the 73 Technical permit revisions issued since 2009, and none of these Technical permit revisions were issued under the 10 percent increase allowance provisions contained in 20.2.72.219(B)(1)(e) NMAC.²¹

²¹ Additional historical Technical permit revisions data was provided via electronic mail dated November 2, 2012,

Therefore, based on the insignificant environmental impacts associated with the Technical permit revisions found in 20.2.72.219(B)(1)(b) NMAC and 20.2.72.219(B)(1)(f) NMAC and the limited scope of permitting actions allowed under the Technical revision found in 20.2.72.219(B)(1)(e) NMAC, we propose to find that New Mexico provided an adequate demonstration and justification to show that exclusion of these remaining three types of Technical permit revisions provisions from the full public participation requirements are environmentally insignificant and therefore satisfy the provisions of 40 CFR 51.160(e) and 161.

c. 110(l) Analysis for Technical Revisions

As noted, the proposed revisions to add Section 219 and establish a tiered permit revisions approach for Minor NSR modifications result in a reduction of public notice requirement for a portion of the modifications listed as Technical permit revisions. Similar to the Administrative permit revisions, most of the permit actions that qualify as Technical permit revisions do not have associated increases in permitted emission limits. Under the new provisions found in Section 219, these Technical permit revisions are required to conduct a reduced public notice that requires the applicant provide notice via certified mail to specific persons and via a published newspaper notice. This public notice is reduced compared to the public notice required for Significant permit revisions, but is more stringent than the current SIP requirements for revisions with no associated increases in permitted emissions, which include a requirement for public notice only for those permit revisions that include an increase in a permitted emission limit. Therefore, for those Technical permit revisions which do not have associated increases in permitted emission limits, the proposed revisions to the New Mexico SIP result in additional public notice requirements that are not included in the current SIP.

The three permit actions identified as Technical permit revisions in 20.2.72.219(B)(1)(b) NMAC, 20.2.72.219(B)(1)(e) NMAC, and 20.2.72.219(B)(1)(f) NMAC do include associated increases in permitted emission limits. Two of these permit revisions allow only for small increases in permitted emission rates (1 pound per hour, which corresponds to 4.38 tons per year assuming continuous operation). The remaining permit action that qualifies as a Technical permit revision having an associated increase in emission limitations described in 20.2.72.219(B)(1)(e) NMAC has other requirements that must be met by the permit revision action that ensure that the revision will not contribute to a NAAQS violation. For example, the applicant must demonstrate that the increase in permit emissions limits being proposed as a result of stack testing will not result in a new allowable emission limit in the permit that would contribute to a violation of the NAAQS. These revisions, like all other Technical permit revisions, will undergo review by NMED during which the Department will confirm that the revision meets the applicable requirements of Section 219 to qualify for a Technical permit revision and determine if the revision should be issued, denied, or “bumped up” to a Significant permit revision. Since Technical permit revisions have a required public notice component, the public will be notified of the proposed revision and will have the opportunity to request a public meeting if they have significant questions or concerns regarding the proposed permit revision.

Since adopting the tiered permit revisions approach in 1998, New Mexico has issued 2,055 Administrative permit revisions, 234 Technical permit revisions, and 482 Significant permit revisions in accordance with the Section 219 provisions. NMED’s implementation of the tiered permit revision program, which allows for reduced public notice for Administrative and Technical revisions, has not resulted in a measured exceedance of the NAAQS and has not

shown any interference with reasonable further progress in the state.²² Furthermore, a review of the Technical permit revisions issued in the last three calendar years (2009 – 2011) shows that the total annual increases in permitted emissions is less than 7 tons per year for all NAAQS pollutants for each of the years.²³ In fact, most of the pollutants show no change or an overall decrease in annual emissions as a result of the Technical permit revisions issued during a given calendar year. This historical look back of the New Mexico preconstruction permitting program is consistent with our expectation that the tiered permit revision program and associated tiered public notice requirements will not have adverse impacts on air quality that interfere with attainment or reasonable further progress or any other applicable requirement of the Act.

Based on the reasons discussed above, we do not believe that the addition of Technical permit revisions to the tiered approach in Section 219, will interfere with attainment or reasonable further progress or any other applicable requirement of the Act. We believe that New Mexico provided a demonstration that adequately justifies the scope of activities that require full review with public participation, because it excludes Technical permit revisions that have associated environmental impacts that are either *de minimis* or environmentally insignificant, using *de minimis* principles like those established in *Alabama Power* to identify permit revisions that are not environmentally significant. Our evaluation of the SIP revision submittals related to Section 219, which are under review in this action, demonstrates compliance with section 110(l) of the CAA and provides further basis for proposed approval of this SIP revision.

d. Significant Permit Revisions

²² Historical permit revisions data provided via Clarification of Exemptions in Section 202 of 20.2.72 NMAC – Construction Permits letter dated September 19, 2012 from Richard L. Goodyear, PE, Bureau Chief, NMED to Mr. Thomas Diggs, Associate Director for Air Programs, EPA, Region 6.

²³ Additional historical Technical permit revisions data was provided via electronic mail dated November 2, 2012, from Kerwin Singleton, NMED, to Ashley Mohr, EPA, Region 6.

Significant revisions include those modifications made at a stationary source that either prior to or following the modification would result in a facility-wide potential emission rate for any regulated air contaminant greater than 10 pounds per hour or 25 tons per year, given that the modification does not qualify as a Paragraph A, B, or C exemption under Section 202 or an Administrative or Technical Revision under Section 219. Significant permit revisions must follow the same permitting procedures and meet the same permitting requirements (e.g., payment of applicable fees, completion of public notice) as those required for newly issued Minor NSR permits. The permitting requirements for Significant permit revisions are no more or less stringent than those required for permit revisions with an associated increase in permitted emission rates under the currently approved SIP. Significant permit revisions are subject to the same submitted public participation requirements as those required for initial Minor NSR permits, that we are proposing to approve. Because the associated public participation requirements do not undermine the SIP revision's ability to meet section 110(l) or any other applicable requirement of the Act, we propose to approve Significant permit revisions under Section 219 into the New Mexico SIP.

7. Submitted Revisions to Section 202 – New Exemptions for *de minimis* Sources and Activities from Minor NSR Permitting Requirements

As required by 40 CFR 51.160(e), a NSR program, including a Minor NSR permitting program, must have procedures in place that identify the “types and sizes of facilities, buildings, structures, or installations which will be subject to review.” As part of the current SIP-approved Part 72 regulations, all stationary sources with emissions in excess of the following emissions thresholds are required to obtain a construction permit: 1) Any person constructing a stationary source which has a potential emission rate greater than 10 pounds per hour or 25 tons per year of

any regulated air contaminant for which there is a National or New Mexico Ambient Air Quality Standard; 2) Any person modifying a stationary source when all of the pollutant emitting activities at the entire facility, either prior to or following the modification, emit a regulated air contaminant for which there is a National or New Mexico Ambient Air Quality Standard with a potential emission rate greater than 10 pounds per hour or 25 tons per year and the regulated air contaminant is emitted as a result of the modification ; and 3) Any person constructing a stationary source which has a potential emission rate for lead greater than 5 tons per year or modifying a stationary source which either prior to or following the modification has a potential emission rate for lead greater than 5 tons per year.²⁴

Therefore, the current New Mexico SIP does exempt constructed stationary sources and modifications to an existing stationary source with potential emissions below these thresholds from the Minor NSR permitting requirements. These emissions based exemptions are the only type of exemptions contained in the current SIP for the Minor NSR permitting program.

As part of the May 29, 1998 SIP submittal, Paragraphs A, B, and C were added to Section 202 containing new exemptions from the Minor NSR permitting requirements in Part 72. These newly proposed exemptions are emission source or activity based exemptions. The provisions contained in these new Paragraphs include a listing of the specific types and sizes, where applicable, of sources and activities that would be exempt from all or a portion of the preconstruction permitting requirements. Therefore, the sources and activities included in Paragraphs A, B, and C can be commenced or changed without obtaining a Minor NSR permit or Minor NSR permit revision. The following subsections describe the sources and emission activities listed in each Paragraph and the permitting requirements they are exempted from in

²⁴ The New Mexico SIP at 20.2.72.200(A)(1), (2), and (5) specify the emissions thresholds that trigger minor preconstruction permitting requirements.

further detail. Because these Paragraphs add source and activity specific exemptions from preconstruction permitting beyond the exemptions evaluated for and included in the current New Mexico SIP, the following subsections also evaluate each new Paragraph to determine if the proposed exemptions will interfere with attainment or reasonable further progress or any other applicable requirement of the Act pursuant to section 110(l).

a. Paragraph A Exemptions

Paragraph A includes a list of exempted emission sources and activities EPA has historically approved into state SIPs, finding them to have *de minimis* environmental impacts due to their trivial, insignificant nature.²⁵ These emission sources and activities include, but are not limited to, those relating to office activities such as photocopying, residential activity such as fireplaces and barbecue cookers, food service such as cafeteria activity, and maintenance of ground activities such as lawn care and pest control (see our TSD for a complete list of the Paragraph A exemptions).

b. 110(l) Analysis for Paragraph A Exemptions

NMED provided a summary of anticipated impacts on ambient air quality for the emission sources and activities included in the Paragraph A exemptions. For all sources on this list, NMED indicated that impacts are expected to be non-existent, negligible/insignificant, or less than emissions from other sources that are currently unregulated.²⁶ NMED's determination of anticipated impacts for these sources is consistent with our understanding of the environmental insignificance of emissions anticipated from these small emission sources and

²⁵ See e.g. Montana Air Quality Permits – General Exclusions (76 FR 40237, July 8, 2011), West Virginia Table 45-13B De Minimis Sources (72 FR 5932, February 8, 2007).

²⁶ Supporting documentation contained in May 29, 1998 SIP submittal, specifically the direct testimony and public hearing transcript documents. Additional clarification also provided via Clarification of Exemptions in Section 202 of 20.2.72 NMAC – Construction Permits letter dated September 19, 2012 from Richard L. Goodyear, PE, Bureau Chief, NMED to Mr. Thomas Diggs, Associate Director for Air Programs, EPA, Region 6.

activities. In addition, NMED has been carrying out the MNSR permitting program based on the codification of their permitting policy since the adoption of the Paragraph A permit exemptions in 1998 without any indication that these permit exemptions have interfered with attainment or reasonable further progress. Specifically, the implementation of the Paragraph A exemptions has not resulted in a measured exceedance of the NAAQS. The historical monitoring data is consistent with the anticipated impacts from these types of emission sources and activities being environmentally insignificant along with the fact that the sources that qualify for exemptions from Minor NSR permitting requirements make a small portion of the state's emission sources. Based on the current number of active emission sources in the state of New Mexico, NMED estimates that the portion of emission sources that qualify for exemptions under Section 202, including the Paragraph A exemptions, accounts for less than ten percent (10%) of the total number of active emission sources in the state.²⁷ Based on the supporting information and historical look back regarding these types of emission source and activity specific exemptions in other SIPs, EPA proposes to approve Paragraph A of Section 202 into the New Mexico SIP.

c. Paragraph B Exemptions

Paragraph B of Section 202 includes the addition of a second list of source and activity specific permit exemptions for the Minor NSR permitting program. Like the Paragraph A emission sources, the Paragraph B sources and activities are exempted from the Minor NSR permitting requirements. However, facilities are required to include a listing of all Paragraph B exempt sources in their permit application. This inclusion in the permit application serves as a notification to NMED that a Paragraph B exempt source is located at a facility. NMED can then, based on the notification, verify that the source qualifies for the permit exemption. For cases

²⁷ Information regarding the portion of current active emission sources that qualify for the source and activity specific exemptions under Section 202 was provided via electronic mail dated September 18, 2012, from Kerwin Singleton, NMED, to Ashley Mohr, EPA, Region 6.

where a Paragraph B source is being added to a permitted facility, the owner or operator is required to submit a request to NMED requesting an Administrative revision to the permit. This revision request also serves as a notification that a Paragraph B source is located at a facility and provides NMED an opportunity to verify that the source qualifies for the claimed exemption. Administrative revisions are subject to the revised requirements under Section 219 and were further discussed in Subsection III.B.6.a of this preamble.

The list of exempt sources and activities included in Paragraph B also includes operational limitations for most of the emission sources, which serve to minimize the potential impacts from these sources and activities on ambient air quality. The following is a listing of the Paragraph B exemptions, including any operational limitations contained in the Section 202 provisions:

1. Fuel burning equipment which is used solely for heating buildings for personal comfort or for producing hot water for personal use and which:
 - a. Uses gaseous fuel and has a design rate less than or equal to five (5) million BTU per hour; or
 - b. Uses distillate oil (not including waste oil) and has a design rate less than or equal to one (1) million BTU per hour;²⁸
2. VOC emissions resulting from the handling or storing of any VOC if:
 - a. Such VOC has a vapor pressure of less than two tenths (0.2) PSI at temperatures at which the compound is stored and handled; and
 - b. The owner or operator maintains sufficient record keeping to verify that the requirements of Sub-paragraph (a) of this paragraph are met;

²⁸ This activity generally is not considered construction or a modification by EPA and not required to obtain a minor NSR permit.

3. Standby generators which are:
 - a. Operated only during the unavoidable loss of commercial utility power;
 - b. Operated less than 500 hours per year; and
 - c. Either are:
 - i. The only source of air emissions at the site; or
 - ii. Accompanied by sufficient record keeping to verify that the standby generator is operated less than 500 hours per year;
4. The act of repositioning or relocating sources of air emissions or emissions points within the plant site, but only when such change in physical configuration does not increase air emissions or the ambient impacts of such emissions;²⁹
5. Any emissions unit, operation, or activity that has a potential emission rate of no more than one-half (1/2) ton per year of any pollutant for which a National or New Mexico Ambient Air Quality Standard has been set or one-half (1/2) ton per year of any VOC. Multiple emissions units, operations, and activities that perform identical or similar functions shall be combined in determining the applicability of this exemption;
6. Surface coating of equipment, including spray painting, roll coating, and painting with aerosol spray cans, if:
 - a. The potential emission rate of VOCs do not exceed ten (10) pounds per hour;
 - b. The facility-wide total VOC content of all coating and clean-up solvent use is less than two (2) tons per year; and
 - c. The owner or operator maintains sufficient record keeping to verify that the requirements in Sub-paragraphs (a) and (b) of this paragraph are met;

²⁹ This activity does not increase emissions and therefore generally is not considered construction or modification by EPA, requiring a minor NSR permit.

7. Particulate emissions resulting from abrasive blasting operations, if:

- a. Blasting operations are entirely enclosed in a building; and
- b. No visible particulate emissions are released from the building.

d. 110(l) Analysis for Paragraph B Exemptions

Similar to that of the analysis provided for Paragraph A sources, NMED provided an analysis of the anticipated impacts on ambient air quality for the sources contained in Paragraph B of Section 202. Emissions estimates were provided for sources excluded under Paragraph B, Sub-paragraphs 1, 2, 4, 5, 6 and 7. All of the emissions estimates provided for the Paragraph B sources in the SIP submittal are less than 5.5 tons per year. NMED did not provide specific emissions information for standby generators, which are found under Sub-paragraph 3 of the Paragraph B exemptions in Section 202. However, standby generators only qualify for the Paragraph B exemptions if they are operated only during periods of unavoidable loss of commercial utility power and operate less than 500 hours per year. Paragraph B also requires that for those sources located at a site with other air emission sources, the facility must maintain records to verify operating hours below 500 hours. Based on the limitations on the annual hours of operation for the exempt standby generators, the expected annual emissions from these types of sources is expected to be of similar magnitude as those emissions resulting from the other Paragraph B exempted sources, i.e., less than 5.5 tons per year. The provisions under Section 202 also include similar operational restrictions for other exempted sources under Paragraph B that minimize the potential impacts from these exempted emission sources. As indicated in the state's analysis, the emissions resulting from the Paragraph B exempted sources are not expected to have adverse impacts on air quality. Furthermore, Section 202 requires that applicants report the presence of the Paragraph B exempted sources on permit applications so that the Department can

verify that the sources meet the requirements under this Paragraph and qualify as a Paragraph B exempted sources, and thus will not adversely impact air quality.

In addition to the emissions estimates information provided by New Mexico, NMED has been carrying out the Minor NSR permitting program allowing for sources and activities listed in Paragraph B to be exempt from a portion of the preconstruction permitting requirements since the adoption of the permit exemptions in 1998 without any indication that these permit exemptions have interfered with attainment or reasonable further progress. As previously stated, NMED has reviewed the currently active emission sources contained in the state's permitting database to determine the number of documented sources that qualify for exemptions under Section 202. NMED has determined that Section 202 exempted sources, including Paragraph B sources, account for less than 10 percent of the total number of currently active emission sources. Based on the supporting information and historical look back data regarding these emission source and activity specific exemptions, EPA proposes to approve Paragraph B of Section 202 into the New Mexico SIP.

e. Paragraph C Exemptions

20.2.72.200(A)(3) NMAC of the current SIP requires sources that are subject to the applicable requirements of NSPS, NESHAP, or other emission limitation related requirements of another Part under Chapter 2 of NMAC to obtain a preconstruction permit under Part 72, regardless of the source's potential to emit. The submitted Paragraph C exemption under Section 202 exempts from Minor NSR permitting requirements under Part 72 these sources with potential emission rates less than 25 tons per year or 10 lb per hour if the only reason permitting under Part 72 is triggered is by the fact the source is subject to NSPS, NESHAP, or another Part

under Chapter 2 of NMAC.^{30,31} This exemption only applies to the permitting applicability requirement found in 20.2.72.200(A)(3) NMAC. Therefore, in the event a source subject to NSPS, NESHAP, or other Part exceeds the permitting applicability thresholds, such as the thresholds for new Minor NSR sources found in 20.2.72.200(A)(1) NMAC or Minor NSR modifications found 20.2.72.200(A)(2) NMAC, then the source would be required to be subject to the Minor NSR permitting requirements under Part 72. New Mexico has also explicitly excluded the following NSPS and NESHAP sources from claiming the exemption under Paragraph C of Section 202: NSPS Subparts I and OOO and NESHAP Subparts C and D.

f. 110(l) Analysis for Paragraph C Exemptions

Under the current SIP at 20.2.72.200(A)(3) NMAC, sources subject to NSPS, NESHAP, or any other New Mexico Air Quality Control Regulation which contains emission limitations for any regulated air contaminant are subject to the Minor NSR permitting requirements in Part 72 regardless of whether their potential to emit is less than the 25 tons per year or 10 lb per hour permitting threshold in 20.2.72.200(A)(1) NMAC. The submitted Paragraph C of Section 202 includes an exemption for these sources from 20.2.72.200(A)(3) NMAC, and thus an exemption from the Minor NSR permitting requirements in Part 72, if they are included in a Notice of Intent under Part 73 or have met all applicable NSPS and NESHAP requirements, and have a potential to emit under 25 tons per year or 10 lb per hour. This exemption thus is less stringent than the requirements of the currently approved SIP, and must be evaluated to determine whether it would cause interference with attainment or reasonable further progress.

³⁰ The applicability test requiring the source to obtain a permit due to applicable emission limits under NSPS, NESHAP, or other Part under NMAC Chapter 2 is found in 20.2.200(A)(3) NMAC.

³¹ To qualify for the Paragraph C exemptions, sources are also required to be included in a Notice of Intent filed under 20.2.73 NMAC (Notice of Intent and Emissions Inventory); or to have met the notification requirements to which they are subject under NSPS or NESHAP.

NMED indicated in testimony before the state Environmental Improvement Board that the intent of the current SIP approved rule was to use the Part 72 permit process as a mechanism for receiving notification of NSPS, NESHAP, or other regulated sources. NMED indicated in hearing testimony that it is unnecessary for such a source, as long as its potential to emit is under the 25 tons per year or 10 lb per hour Minor NSR permitting thresholds, to undergo the entire Part 72 permitting program if the Department's intent – notification – is achieved in another way. Based on the implementation of this preconstruction permitting requirement along with the other state and federal notification requirements applicable to these sources, the Department determined that the notification requirements found in Part 73, NSPS, or NESHAP are sufficient for these sources with potential emission rates less than 25 tons per year or 10 lb per hour. Therefore, requiring these sources to undergo the entire Part 72 preconstruction permitting process merely to obtain notification of the sources' existence is not necessary, as long as, the source complies with the Part 73, NSPS, or NESHAP notification requirements. EPA finds from NMED's supporting documentation nothing indicating these sources with potential emission rates less than 25 tons per year or 10 lb per hour were permitted for any reason other than notification.

Under the proposed Paragraph C exemption, these sources are only exempted from the Minor NSR permitting requirements in Part 72 and are still required to meet all other applicable requirements, including emissions limitations, testing, recordkeeping, and reporting requirements. Additionally, this exemption only applies to the 20.2.72.200(A)(3) NMAC applicability test, and the source must evaluate the permitting applicability requirements found in Sub-paragraphs (1), (2), (4), (5), and (6) under Paragraph A of Section 200. Based on NMED's testimony, EPA finds the Paragraph C exemption for these sources if their potential to emit is

under Part 72's permitting thresholds for new Minor NSR sources and Minor NSR modifications codifies NMED's original primary purpose behind the current SIP – notification – without unnecessarily requiring these sources to undergo the full Minor NSR permitting requirements of Part 72 in order to meet that purpose. Because this exemption would apply only for those sources with a potential to emit below the currently SIP approved 25 tons per year or 10 lb per hour minor NSR permitting thresholds in Part 72, EPA proposes to find Paragraph C of Section 202 does not interfere with attainment or reasonable further progress and approve it into the New Mexico SIP.

g. Portable Source Relocation

The submitted Section 202 also contains provisions related to applicable permitting requirements for portable sources that are being relocated. These provisions were previously contained in Paragraph B of Section 202, but were moved to Paragraph D based on the additions of the source specific exemptions in the previous paragraphs. As part of the May 29, 1998 SIP revisions, clarifying language was added to provisions in Paragraph D regarding the requirements applicants must meet in order to relocate a permitted portable source without obtaining a permit revision. This SIP revision submittal also included the incorporation of additional recordkeeping and notification requirements that must be met in order for the portable source to relocate without obtaining a permit revision. As compared with the current SIP, EPA is proposing to approve these revised provisions as they include more stringent requirements for portable source relocation to meet and qualify for an exemption from preconstruction permitting.

h. Additional 110(l) Analysis – Historical Look Back

In addition to the referenced supporting documentation regarding the Section 202 exemptions included in the May 29, 1998 SIP revision submittal, NMED also provided data as

part of a historical look back to document how many active emission sources have been reported as exempted sources, as well as how many active emission sources throughout the state may have qualified for exemptions from preconstruction permitting under Section 202 of Part 72. Within the current database of active emission sources, there are 493 subject items listed as “Exempt” within the database. These subject items may represent more than one emission source at a facility, if the facility has multiple units that are the same. In addition, the current active emission source database included additional emission units that may have qualified for a permit exemption under Section 202 and are not listed specifically as “Exempt.” NMED estimates that the total number of emission sources that may have qualified for exemptions from preconstruction permitting requirements is currently more than 2,000.³² NMED has indicated that over the course of a decade since the state adopted the Permit Exemptions provisions in Section 202, the implementation of the Permit Exemptions provisions have not resulted in a measured exceedance of the NAAQS. EPA finds this data is consistent with the supporting documentation provided by New Mexico in the SIP submittal that stated that the anticipated impacts on air quality from the sources qualifying for exemptions from preconstruction permitting requirements under Section 202 are expected to be insignificant.

Based on the reasons discussed above, we do not believe that the addition of the permit exemptions contained in Section 202 for minor permit modifications will interfere with attainment or reasonable further progress or any other applicable requirement of the Act. Furthermore, it is important to note that all of the permit exemptions contained in Section 202 are limited only to the Minor NSR permitting requirements contained in Sections 200 – 299 of

³² Information regarding active emission sources and the current number of active sources that have claimed and/or may have qualified for exemptions under Section 202 was provided via Clarification of Exemptions in Section 202 of 20.2.72 NMAC – Construction Permits letter dated September 19, 2012 from Richard L. Goodyear, PE, Bureau Chief, NMED to Mr. Thomas Diggs, Associate Director for Air Programs, EPA, Region 6 letter dated September 19, 2012, from Mr. Richard Goodyear, NMED, to Mr. Thomas Diggs, EPA.

Part 72. These exemptions would not apply to any other applicable state or federal requirements. The source would still be required to meet all other applicable state and federal requirements, including major NSR permitting requirements, NSPS, NESHAPS or MACT requirements, and state toxics permitting requirements, if applicable. The source would also have to comply with any control requirements developed as part of a SIP control strategy, like the control requirements applicable to the PM₁₀ nonattainment area in Anthony. Our evaluation of the SIP revision submittals related to Section 202, which are under review in this action, demonstrates compliance with section 110(l) of the CAA and provides further basis for proposing approval of this SIP revision.

IV. Proposed Action

EPA is proposing an approval of the SIP revisions to the Construction Permits regulation found in Part 72 that were submitted by New Mexico on May 29, 1998, November 6, 1998, April 11, 2002, April 25, 2005, and November 2, 2006, and the letter dated November 7, 2012 from the Secretary. EPA is proposing this action in accordance with section 110 of the Act.

A. What are We Not Addressing in this Proposed Action?

EPA is only taking proposed action on the severable revisions to Part 72 contained in the five SIP revision submittals listed above that were submitted to us for review and incorporation into the New Mexico SIP. By severable, we mean that the portions of the SIP revision submittals relating to Part 72 can be implemented independently of the remaining portions of the submittal, without affecting the stringency of the submitted rules. In addition, the remaining portions of the submittal are not necessary for approval of the provisions addressing Part 72. The following is a list of other revisions contained in the May 29, 1998, November 6, 1998, April 11, 2002, April 25, 2005, and November 2, 2006 submittals that are not being addressed in this proposed action:

- The November 6, 1998 submittal from New Mexico also contained revisions to correct errors in 20.2.70 NMAC – Operating Permits. Because 20.2.70 NMAC is outside the scope of the New Mexico SIP, the revisions to the Operating Permits provisions were not submitted as revisions to the state’s SIP.
- The April 11, 2002 submittal from New Mexico also contained revisions to 20.2.73 NMAC – Notice of Intent and Emissions Inventory Requirements, 20.2.74 NMAC – Permits – Prevention of Significant Deterioration, 20.2.75 NMAC – Construction Permit Fees, and 20.2.79 NMAC – Permits – Nonattainment Areas. Portions of the submittal related to Parts 73, 74, 75, and 79 have been or will be addressed in separate SIP revisions reviews and rule actions, as necessary.
- The April 11, 2002 submittal also included documentation related to an additional revision to 20.2.72 NMAC (filed with the State Records Center on February 28, 2001, effective March 30, 2001), which was submitted to EPA for informational purposes only and was not submitted for approval under the SIP. Therefore, the February 28, 2001 state adopted revisions to Part 72 are not included in this proposed action.
- The April 25, 2005 submittal from New Mexico also contained revisions to 20.2.66 NMAC – Cotton Gins, 20.2.73 NMAC – Notice of Intent and Emissions Inventory Requirements, and 20.2.75 NMAC – Construction Permit Fees. Portions of the submittal related to Parts 66, 73, and 75 have been or will be addressed in separate SIP revisions reviews and rule actions, as necessary.

- The November 2, 2006 submittal from New Mexico also contained revisions to 20.2.3 NMAC – Ambient Air Quality Standards, 20.2.70 NMAC – Operating Permits, and 20.2.99 NMAC – Conformity to the State Implementation Plan of Transportation Plans, Programs and Projects. Portions of the submittal related to Parts 3, 70, and 99 have been or will be addressed in separate SIP revisions reviews and rule actions, as necessary.

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. See 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this notice merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);

- does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: November 13, 2012.

Ron Curry,

Regional Administrator, Region 6.

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